BILL NO. S-89-08- 19

SPECIAL ORDINANCE NO. S-133-89

AN ORDINANCE approving Contract **FOR RES. 6121-89, OXFORD NSA'89, CURBS & WALKS** between **GAINES CONSTRUCTION** and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Contract **FOR RES. 6121-89, OXFORD NSA'89, CURBS & WALKS** by and between **GAINES CONSTRUCTION** and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety, is hereby ratified, and affirmed and approved in all respects, respectfully for:

the improvement of curbs and sidewalks on
1) Hanna Street from Colerick to Oxford (Base);
(2) Hanna Street from Boltz to Colerick (Alternate I);
(3) Hanna Street from McKee to Colerick (Alternate II);

involving a total cost of Ninety-Nine Thousand Five Hundred Sixty-One and 70/100 Dollars ($99,561.70).

SECTION 2. Prior Approval has been requested from Common Council on July 11, 1989. Two copies of said Contract are on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Samuel J. Talarico
Councilmember

APPROVED AS TO FORM
AND LEGALITY

J. Timothy McCaulay
J. Timothy McCaulay, City Attorney

CONTRACT NO. 6121-89
OXFORD NSA'89

BOARD ORDER NO. 5-89 WORK ORDER NO. 10,765

THIS CONTRACT made and entered into in triplicate this 12th day of July, 1989, by and between GAINES CONSTRUCTION CO., INC., herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works and Safety, herein called OWNER;

WITNESSETH, that the CONTRACTOR and the OWNER, for the considerations hereinafter named, agree as follows:

ARTICLE 1: SCOPE OF WORK

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following:

RESOLUTION NO. 6121-89 OXFORD NSA'89

all according to RES. NO. 6121-89, Drawing No. _____, Sheets _____, and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2: THE CONTRACT SUM

The OWNER shall pay CONTRACTOR for the performance of the contract the unit price sum of $ 99,561.70. In the event the amount of work is increased or decreased by OWNER, the contract sum shall be increased or decreased according to the unit price schedule set forth in the CONTRACTOR's Proposal.

ARTICLE 3: PROGRESS PAYMENTS

The OWNER shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by OWNER upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the 15th day of the following month, ninety (90%) percent of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the CONTRACTOR and approved or revised by the Engineering Department

of the OWNER less the aggregate of previous payments, will be paid by OWNER to the CONTRACTOR.

ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a Completion Affidavit by the CONTRACTOR that the work is ready for final inspection and acceptance, the Board of Public Works and Safety will direct the Engineering Department of the OWNER to promptly make such inspection. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works and Safety which shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted. Thereupon the entire balance of the Contract sum shall be due and payable to the CONTRACTOR; provided only that CONTRACTOR shall first furnish OWNER, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

ARTICLE 5: WORKMEN'S COMPENSATION ACT

The CONTRACTOR will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen or any judgment of any court or award of any Board of Arbitrators or of the Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said CONTRACTOR, shall be conclusive against CONTRACTOR as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that CONTRACTOR indemnify and hold harmless OWNER in the premises.

ARTICLE 6: NONDISCRIMINATION OF LABOR

The CONTRACTOR further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. The successful bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after comple-

tion of construction or upon request of the Office of Compliance.

ARTICLE 7: PREVAILING WAGE SCALE

The CONTRACTOR agrees to pay, and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the Statutes of the State of Indiana, and the Ordinances of the City of Fort Wayne according to the applicable wage scale as included in the bid documents.

ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

a. Advertisement for Bids, for Contract No. 6121-89.
b. Instructions to Bidders for Contract No. 6121-89.
c. Contractor's Proposal Dated June 14, 1989.
d. Ft. Wayne Engr. Dept. Drawing #_____.
e. Supplemental Specifications for Contract No. 6121-89.
f. Workman's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.
g. Non-Discrimination of Labor, General Ordinance No. G-34-78 (as amended).
h. Prevailing Wage Scale.
i. Performance and Guaranty Bond.
j. Labor and Material Payment Bond.
k. Minority/Female Employment Hourly Utilization.
l. Right-of-Way Cut Permit.
m. Comprehensive Liability Insurance Coverage.
n. MBE/WBE Committment Form.
o. _____
p. _____

ARTICLE 9: GUARANTEE OF WORKMANSHIP

At the time of execution of this contract, the CONTRACTOR shall furnish a Performance and Guaranty Bond in favor of the City of Fort Wayne in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of three (3) years following written acceptance of the work by the OWNER.

ARTICLE 10: INDEMNITY

CONTRACTOR shall furnish to OWNER, within ten (10) days of the date hereof, a certificate from an insuror acceptable to OWNER showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to OWNER and in accordance with the Statutes of the State of Indiana.

ARTICLE 11: ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the CONTRACTOR and the OWNER under the provisions of this Contract shall be subject to the decision of the Director of Board of Public Works & Safety of the OWNER, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works and Safety.

ARTICLE 12: COMPLETION DATE

The CONTRACTOR agrees to complete the work specified in the contract within 9/1/89 consecutive calendar days after having been ordered by the OWNER to commence work under this contract.

ARTICLE 13: COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the OWNER by the Mayor and Board of Public Works and Safety of the City of Fort Wayne, Indiana, shall not be binding upon the OWNER unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

ARTICLE 14:

This contract is governed by Laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

(CONTRACTOR)

BY: Henry Davis Sr

Pres, President

BY: Darryl Davis

_____, Secretary

CITY OF FORT WAYNE, INDIANA

BY: _____
Paul Helmke, Mayor

BOARD OF PUBLIC WORKS & SAFETY

_____
Charles E. Layton
Director of Public Works

_____
Michael McAlexander
Director of Public Safety

_____
Douglas M. Lehman
Director of Administration & Finance

ATTEST:

_____
Helen V. Gochenour, Clerk

ACKNOWLEDGMENT

STATE OF INDIANA:

SS:

COUNTY OF ALLEN:

BEFORE ME, a Notary Public, in and for said County and State, this 7th day of July, 1989, personally appeared the within named Dennis Gaines, who being by me first duly sworn upon their oaths say that they are the President and Darrel Gaines respectively, ~~of~~ as Secretary and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of Gaines Construction Co., Inc. for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Helen V. Gochenour
NOTARY PUBLIC

HELEN V. GOCHENOUR
Type or Print Name of Notary

MY COMMISSION EXPIRES: 6-16-91

ACKNOWLEDGEMENT

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 17th day of July, 1989, personally appeared the within named Paul Helmke, Mayor of the City of Fort Wayne; Charles E. Layton, Michael McAlexander and Douglas M. Lehman, members of the Board of Public Works and Safety, City of Fort Wayne, Indiana; and Helen V. Gochenour, Clerk of the Board of Public Works and Safety, City of Fort Wayne, Indiana, to me personally known, who being by me duly sworn said that they are respectively the Mayor of the City of Fort Wayne, the Members and Clerk of the Board of Public Works and Safety of the City of Fort Wayne, Indiana, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledged said instrument to be the voluntary act and deed of said City for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Carolyn S. Eschmann
NOTARY PUBLIC

Carolyn S. Eschmann
Type or Print Name of Notary

My Commission Expires: 6-16-91

Approved by the Common Council of the City of Fort Wayne on day of _____, 19_____.

Special Ordinance No._____.

Performance and Payment Bond

KNOW ALL MEN BY THESE PRESENTS: that

Gaines Construction Company., Inc.
217 W. Wasington Center Road
Fort Wayne , Indiana 46825

(Here insert full name and address or legal title of Contractor)

as Principal, hereinafter called Contractor and,

Indiana Lumbermens Mutual Insurance Company
5550 W. Touhy Avenue
Skokie, Illinois 60077

(Here insert full name and address or legal title of Surety)

as Surety, hereinafter called Surety, are held and firmly bound unto

City of Fort Wayne

(Here insert full name and address or legal title of Owner)

as Obligee, hereinafter called Owner, in the amount of

Niney Nine Thousand Five Hundred Sixty One 70/100 Dollars ($ 99,561.70),

for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Contractor has by written agreement dated 19 , entered into a contract with Owner for

Res. #6121 - 89 Oxford NSA '89 Improvement

In accordance with Drawings and Specifications prepared by

(Here insert full name and address or legal title of Architect)

which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that, if the Principal shall promptly and faithfully perform said Contract and make payment to all claimants, as hereinafter defined, for all labor and material used in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

A) Whenever Contractor shall be, and declared by owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall either
   1) Complete the Contract in accordance with its terms and conditions; or
   2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof, subject to the limitations in Paragraph D.
   3) The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

B) 1) A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

Indiana Lumbermens Mutual Insurance Company

POWER OF ATTORNEY

PRINCIPAL Gaines Construction Company, Inc. EFFECTIVE DATE July 3, 1989

217 W. Washington Center Road (STREET ADDRESS) Fort Wayne, Indiana (CITY) (STATE) 46825 (ZIP CODE)

CONTRACT AMOUNT _____ AMOUNT OF BOND $ 99,561.70

POWER NO. SBP 12056714

KNOW ALL MEN BY THESE PRESENTS, that the Indiana Lumbermens Mutual Insurance Company, a Corporation duly organized and existing under the laws of the State of Indiana, with its principal office in the City of Indianapolis, Indiana, does hereby make, constitute and appoint

Jerry Bey State of Illinios

as its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred to sign, execute, acknowledge and deliver any and all Bonds and undertakings, recognizances, contracts of indemnity, and other writings obligatory in the nature thereof for and on its behalf as follows:

The obligation of the Company shall not exceed four million ($4,000,000.00) dollars.

And to bind the Corporation thereby as fully and to the same extent as if such Bonds and undertakings, recognizances, contract of indemnity, and other writings obligatory in the nature thereof were signed by the President, sealed and duly attested by the Secretary of the Corporation, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. This Power of Attorney is executed and may be revoked pursuant to and by authority granted by Article IV, Section 2-A (1) and (2) of the By-Laws of the Indiana Lumbermens Mutual Insurance Company, which reads as follows:

(1) The President or any Vice President shall have the power and authority, by and with the concurrence with the Secretary of the Corporation, to appoint Attorneys-in-Fact for purposes only of executing and attesting to Bonds and undertakings, recognizances, contracts of indemnity, and other writings obligatory in the nature thereof, and at any time to remove any such Attorney-in-Fact and to revoke the power and authority given to him.

(2) Attorneys-in-Fact when so appointed shall have power and authority, subject to the terms and limitations of the Powers of Attorney issued to them, to execute and deliver on behalf of the Corporation any and all Bonds and undertakings, recognizances, contracts of indemnity, and other writings obligatory in the nature thereof, and such instrument executed by any such Attorney-in-Fact shall be as binding upon the Corporation as if signed by an Executive Officer and sealed and attested by the Secretary.

IN WITNESS WHEREOF, the Indiana Lumbermens Mutual Insurance Company has caused these presents to be signed by its Vice President, attested by its Secretary and its Corporate Seal to be hereto affixed this FIRST day of JUNE 19 88.

ATTEST:

By L.W. Rodney
Secretary

Indiana Lumbermens Mutual Insurance Company

By _____
Vice President

STATE OF INDIANA
COUNTY OF MARION } SS:

On this FIRST day of JUNE 19 88, before me personally came the individual who executed the preceding instrument, to me known, who being by me duly sworn, acknowledged the execution of the above instrument and did depose and say; that he is the therein described and authorized officer of the Indiana Lumbermens Mutual Insurance Company; that he knows the seal of said Corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Corporation; and that he signed his name thereto by like order.

August 10, 1990
My Commission Expires

Letty M. Nieter
Notary Public

STATE OF INDIANA
COUNTY OF MARION } SS:

I, the undersigned, Secretary of the Indiana Lumbermens Mutual Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Indiana Lumbermens Mutual Insurance Company, which is still in force and effect.

This Certificate may be signed and sealed by facsimile under and by the authority of the following resolution of the Board of Directors of Indiana Lumbermens Mutual Insurance Company at a meeting duly called and held on the 12th day of June 1973.

"RESOLVED: That the use of printed facsimile of the Corporate Seal of the Company and of the signature of the Secretary on any certification of the correctness of a copy of an instrument executed by the President or a Vice President pursuant to Article IV, Section 2-A (1) and (2) of the By-Laws appointing and authorizing Attorney-in-Fact to sign in the name and on behalf of the Company Bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof, with like effect as if such seal and such signature had been manually affixed and made, hereby is authorized and approved."

In witness whereof, I have hereunto set my hand and affixed the seal of said Corporation, this 3rd day of July 19 89.

(SEAL)

L.W. Rodney
Secretary

Form 253

June 14, 1989

Department of Public Works & Safety
Office of the Board
Meeting held at 9:00 a.m.
Third Floor Conference Room

Charles E. Layton, Director
Michael McAlexander, Member
Douglas M. Lehman, Member

ATTEST: Helen V. Gochenour, Clerk

1. RECEIVE BIDS - Res. #6121-89, Oxford NSA '89

	Base	Alt. #1	Alt. #2
Gaines Const.	69,409.50	14,056.50	16,092.20
Tomco Const.	_____	_____	_____
Weikel Line	_____	_____	_____
Eng. Est.	$88,136.00	$17,790.00	$21,135.50

2. RECEIVE BIDS - Res. #6124-89, Memorial Park NSA '89

	Base	Alt. #1
Gaines Const.	87,369.00	17,863.00
Tomco Const.	_____	_____
Weikel Line	_____	_____
Eng. Est.	$102,874.65	$20,171.00

3. ✓ AWARD CONTRACT - Received recommendation and tabulation from Street Engineering to award contract for Res. #6122-89, Westfield NSA '89, to Tomco Construction Company in the amount of $62,906.00 for Base Bid, and $28,467.40 for Alternate.

4. ✓ AWARD CONTRACT - Received recommendation and tabulation from Street Engineering to award contract for Res. #6123-89, Michigan Avenue NSA '89, to Weikel Line Company for Base Bid in the amount of $55,670.00 and Alternate Bid in the amount of $29,714.00.

5. ✓ AWARD CONTRACT - Received recommendation and tabulation from Street Engineering to award contract for Res. #6125-89, Hamilton NSA '89, to Tomco Const. Co., in the amount of $64,684.65.

6. ✓ AWARD CONTRACT - Received recommendation and tabulation from Street Engineering to award Contract for Res. #6126-89, Spy Run Self-Help Project, to Tomco Construction Co. in the amount of $15,331.00.

7. ✓ AWARD CONTRACT - Received recommendation and tabulation from Street Light Engineering to award contract for Res. 207-89, Crown Colony Addition Street Lighting to T & F Const. Co., in the amount of $123,363.00.

Read the first time in full and on motion by Schmidt, seconded by Henry, and duly adopted, read the second time by title and referred to the Committee on Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on _____, the _____, day of _____, 19____, at _____ o'clock ____.M.,E.S.T.

DATED: 8-22-89.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Schmidt, seconded by Bradbury, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	8			1
BRADBURY	✓			
BURNS	✓			
EDMONDS	✓			
GiaQUINTA	✓			
HENRY	✓			
LONG	✓			
REDD				
SCHMIDT	✓			✓
TALARICO	✓			

DATED: 9-12-89

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as ~~(ANNEXATION)~~ ~~(APPROPRIATION)~~ ~~(GENERAL)~~ (SPECIAL) (ZONING MAP) ORDINANCE ~~RESOLUTION~~ NO. S-133-89 on the 12th day of September, 19 89,

ATTEST: Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

SEAL

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 13th day of September, 19 89, at the hour of 11:00 o'clock A.M.,E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 15th day of September, 19 89, at the hour of 1:50 o'clock P.M.,E.S.T.

PAUL HELMKE, MAYOR

Admn. Appr. _____

TITLE OF ORDINANCE Contract for Res. 6121-89, Oxford NSA'89, Curbs & Sidewalks

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

SYNOPSIS OF ORDINANCE The Contract for Res. 6121-89, Oxford NSA '89 is for the improvement of Curbs & Sidewalks on

1) Hanna Street from Colerick to Oxford (Base)

2) Hanna Street from Boltz to Colerick (Alternate I)

3) Hanna Street from McKee to Colerick (Alternate II)

Gaines Construction is the Contractor. PRIOR APPROVAL RECEIVED

8-88-08-19

EFFECT OF PASSAGE Improved curb & sidewalk conditions at above location

EFFECT OF NON-PASSAGE _____

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) $99,561.70

ASSIGNED TO COMMITTEE _____

BILL NO. S-89-08-19

REPORT OF THE COMMITTEE ON PUBLIC WORKS

SAMUEL J. TALARICO, CHAIRMAN
DONALD J. SCHMIDT, VICE CHAIRMAN
LONG, GiaQUINTA, BURNS

WE, YOUR COMMITTEE ON PUBLIC WORKS TO WHOM WAS

REFERRED AN (ORDINANCE) ~~(RESOLUTION)~~ approving Contract FOR RES. 6121-89, OXFORD NSA '89, CURBS & WALKS between GAINES CONSTRUCTION and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety

HAVE HAD SAID (ORDINANCE) ~~(RESOLUTION)~~ UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID

(ORDINANCE) ~~(RESOLUTION)~~

DO PASS	DO NOT PASS	ABSTAIN	NO REC

DATED: 9-12-89

Sandra E. Kennedy
City Clerk